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November 18, 2019

**VIA ECF**

The Honorable Paul A. Engelmayer  
United States District Judge  
United States District Court for the Southern District of New York  
40 Foley Square, Room 2201  
New York, NY 10007

**Re: *Blair v. Alstom Transportation, Inc. and Kawasaki Rail Car, Inc.*,  
No. 1:16-cv-03391-PAE-JLC**

Dear Judge Engelmayer:

We represent defendant Kawasaki Rail Car, Inc. (“Kawasaki”) in this action. Pursuant to the Court’s Order of November 7, 2019, we submit this joint status letter on behalf of all parties. As directed, the parties met and conferred regarding the remaining disputed issues (i.e., the form of dismissal of this action, and recovery of costs and fees) but were unable to reach agreement on these issues. Accordingly, the parties jointly submit the following proposed expedited briefing schedules for the anticipated motions.

As to the first disputed issue, Defendants Kawasaki and Alstom Transportation, Inc. (“Alstom”) maintain that the case should be dismissed with prejudice or judgment entered for Defendants, whereas Plaintiff only stipulates to dismissal of the case without prejudice. The parties’ proposed schedule for this motion is set forth below:

| Proposed Date     | Filing                               |
|-------------------|--------------------------------------|
| November 27, 2019 | Defendants’ Motion and Opening Brief |
| December 11, 2019 | Plaintiff’s Opposition               |
| December 18, 2019 | Defendants’ Reply                    |

As to the second disputed issue, the Plaintiff and Defendants have opposing positions, as set forth below.

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**Defendants' Position:** Defendants intend to seek taxable costs pursuant to Fed. R. Civ. P. 54(d)(1) once the Court dismisses this case. In addition, Defendant Kawasaki intends to file a motion to recover its attorneys' fees and non-taxable costs pursuant to Fed. R. Civ. P. 54(d)(2) and 35 U.S.C. § 285. Defendants have notified Plaintiff that a dismissal with prejudice is not a prerequisite for these anticipated motions.

**Plaintiff's Position:** Plaintiff disagrees with Defendants' position. If the Court dismisses the claims against the Defendants without prejudice, the Defendants would not be entitled to any cost and would be precluded as a matter of law from filing any motion pursuant to 35 U.S.C. § 285. Further, Plaintiff would seek relief under Fed. R. Civ. P. 11 with respect to any motion brought pursuant to 35 U.S.C. § 285 as frivolous.

Although the parties disagree as to the legal requirements for the Defendants' proposed motions for fees and costs, they do agree that as a matter of timing any motions for costs and fees would be premature if filed before the Court has formally dismissed the case. The parties therefore propose the following expedited briefing schedule keyed to the date of the Court's Order on the first motion in view of the upcoming holidays:

| Proposed Date if Dismissal is Granted Prior to January 10, 2020 | Proposed Date if Dismissal is Granted on or After January 10, 2020 | Filing  |
|---|--|---|
| 12 days after the Court's decision on the first motion          | 10 days after the Court's decision on the first motion             | Kawasaki's Motion for Fees and Non-Taxable Costs; Defendants' Motion for Taxable Costs (if disputed by Plaintiff) |
| 12 days after Opening Brief                                     | 10 days after Opening Brief  | Plaintiff's Opposition  |
| 6 days after Opposition   | 5 days after Opposition  | Reply   |

Accordingly, the parties respectfully request that the Court adopt the proposed briefing schedules set forth in this letter for the anticipated motions.

Respectfully submitted,



Sheila Mortazavi, Esq.

Cc: Darius Keyhani, Esq.  
Steven Coyle, Esq.